

THE LAW SOCIETY OF SCOTLAND EXAMINATIONS

EUROPEAN UNION LAW

Thursday 14 February 2019

1330 – 1630
(Three Hours)

Please read the following instructions carefully

The examination is of three hours' duration. Candidates are required to answer **FOUR** questions. **ONE** question must be answered from **Section A** and **ONE** question from **Section B**. The **third** and **fourth** questions can be answered from anywhere in the paper. All four questions are of equal value. Answers must be fully reasoned and supported by authority where appropriate. Candidates need to take care to **read the questions carefully and to answer what is asked**. Please note that Questions 5, 6 and 8 are two-part questions, both of which must be answered.

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EXAMINATIONS**

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Candidates **MUST** answer at least ONE question from this part.

SECTION A

Question 1

Define the meaning and ramifications of the following concepts which are part of the Brexit mix now under consideration:

- a) a 'hard' Brexit
- b) a 'soft' Brexit
- c) the backstop
- d) 'retained EU law' under the EU (Withdrawal) Act 2018
- e) the rights of EU citizens in the UK, and UK citizens in the EU, post-Brexit.

Question 2

'[T]he European Union is based on the rule of law and the acts of its institutions are subject to review by the Court of their compatibility with EU law and, in particular, with the Treaty on the Functioning of the European Union and the general principles of law. The Treaty on the Functioning of the European Union has established a complete system of legal remedies and procedures designed to confer on the judicature of the European Union jurisdiction to review the legality of acts of the institutions of the European Union.'

- Case C-550/09 *Criminal proceedings against E and F* (2010)

Discuss how this 'complete system of legal remedies' for the review of EU legislation works. Are you as confident as the Court in its satisfactory operation?

Question 3

Discuss and contrast the current law on the non-contractual liability of the Union for the unlawful conduct of its institutions and the non-contractual liability of the member states for their unlawful conduct in the sphere of EU law.

Question 4

'With a heavy heart', the European Commission has initiated a procedure seeking a determination under Article 7(1) TEU that Poland is in breach of its Treaty obligations under Article 2. It is the first time the Union has taken action under Article 7.

What is it that has so angered the Commission? What steps can be taken under Article 7, and are they likely to prove effective? Compare with the normal enforcement proceedings under Article 258 TFEU.

END OF SECTION A

Candidates **MUST** answer at least ONE question from this part.

SECTION B

Question 5

Two draft laws have been tabled by the government of *Niederösterreich*, one of the nine Austrian *Länder*.

- a) The first law would ban the sale in *Niederösterreich* of the meat of animals ritually slaughtered in accordance with Jewish dietary law (*kashrut*). An exemption would be made for Jews who would be able to buy kosher meat from specialist shops by means of a permit issued to them if they satisfy a rabbinical college of their piety and devotion to the faith. The law was instigated by the *Ministerium für Tierschutzwissenschaften und Tierhaltung* (Ministry for animal welfare).

and:

- b) Owing to high-pressure sales techniques, sometimes targeting elderly and vulnerable householders, the second law will ban door-to-door sales of a whole basket of household items: air cleaners, air conditioners, air purifiers, duct-cleaning services, furnaces, water filters, water heaters, water purifiers, water softeners, water-treatment devices and any combination thereof.

Are the draft laws in (a) and (b) compatible with EU law?

Question 6

- a) Many champion Brexit in part on the grounds that it will allow us 'to keep out criminals and idle layabouts coming here from Europe and scrounging off the state'.

To which one possible retort is, we can do that now.

How accurate is the retort?

and:

- b) In order to become a driving instructor ('Approved Driving Instructor', ADI) in the UK a candidate must satisfactorily pass three qualifying tests (in theory, driving ability and fitness, and instruction ability). There is no compulsory training required to sit the tests. They are set and administered by Driver and Vehicle Standards Agency (DVSA), an agency of the Department for Transport.

In Germany a driving instructor (*Fahrlehrer*) is required by the *Gesetz über das Fahrlehrerwesen* (law on driving instruction) to undergo training in an officially recognised training establishment of 280 hours of instruction over the course of five to eight months, covering principles of pedagogy and psychology; traffic regulations and

hazards on the road; legal aspects; motor vehicles technology; environmental protection, energy-saving driving techniques; lesson-planning; teaching practice; safe and skilful driving techniques; and legal aspects of the profession. Then he or she is admitted to, required to pass a test administered by the Ministry of Transport of each of the *Länder*.

James acquired his ADI permit 20 years ago and has owned and operated a successful driving school in Glasgow since. He hopes to move to Hamburg to set up a driving school there. But he is told by the Hamburg Ministry of Transport he cannot do so, as he is not a qualified *Fahrlehrer*.

Has James any redress in EU law?

Question 7

Article 101 TFEU prohibits anticompetitive agreements between undertakings, decisions by associations of undertakings and concerted practices 'which may affect trade between Member States'. Article 102 prohibits abuse by one or more undertakings of a dominant position within the internal market 'in so far as it may affect trade between Member States'.

When is this requirement of an effect upon trade between member states satisfied? Is it the same thing the Court of Justice is talking about when it says (in Case 5/69 *Franz Völk v Établissements J. Vervaecke*) (1969):

'An agreement falls outside the prohibition in Article [101] when it has only an insignificant effect on the markets, taking into account the weak position which the persons concerned have on the market of the product in question.'

If it is not, what is the difference between the two?

Question 8

a) What are the legal restraints to a distribution agreement under Article 101 TFEU? Does the answer change if an undertaking party to the agreement is in a dominant position in the relevant market?

and:

b) Carbon dioxide (CO₂) is used to aerate beer, cider and sparkling soft drinks, to give them 'fizz'. It is also used to deliver beer at the pub pumps and in packaging for fresh meat and salads. It comes for the most part from ammonia plants that manufacture fertiliser. As demand for fertiliser peaks in Spring, manufacturers often shut down during the Autumn and Winter for maintenance work. The UK has only two plants producing CO₂, and one is closed for maintenance. Currently at least five CO₂ producers across northern Europe are offline for maintenance.

The Federation of Carbonated Drinks Producers (FCDP) is concerned that a shortage of CO₂ is imminent, which will slow soft drink production. It therefore urges the closed UK plant to re-start production and the open plant to increase production. Both refuse.

Is there any redress in competition law the FCDP can use, and how could it do so? If a soft drinks producer shuts down as a result, can it recover damages?

END OF SECTION B

END OF QUESTION PAPER